

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE TRANSPACIFIC PASSENGER AIR  
TRANSPORTATION ANTITRUST  
LITIGATION

No. C 07-05634 CRB

**ORDER DENYING MOTION TO  
CERTIFY FOR INTERLOCUTORY  
APPEAL**

This Document Relates to:  
ALL ACTIONS

On May 9, 2011, the Court granted in part and denied in part various Defendants' motions to dismiss in this case. See Order (dkt. 467). In its Order, the Court considered and rejected the arguments advanced by All Nippon Airways (ANA), China Airlines and Thai Airways in the "Japan Regulatory Brief" that the case should be dismissed under (1) the state action doctrine and (2) the implied preemption doctrine. See Mot. (dkt. 304) at v. The Court explained that it does not agree with Defendants that foreign states should benefit from the state action doctrine, which pertains to domestic states, noting that it would not be the first to extend the doctrine so far beyond its original purpose. Order at 25. The Court further noted that Defendants cited to no authority applying the implied preclusion doctrine to actions authorized and supervised by foreign governments and that it would not extend the doctrine so far beyond its original purpose. Id. at 26.

Defendants ANA and China Airlines now jointly move the Court to certify those rulings for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). The Court finds this matter

1 suitable for resolution without oral argument pursuant to Civil Local Rule 7-1(b), and  
2 declines Defendants' invitation. Interlocutory appeal under section 1292(b) "is to be used  
3 sparingly and only in exceptional cases." See White v. Nix, 43 F.3d 374, 376 (8th Cir.  
4 1994). The Court does not believe that this is such a case. Accordingly, the Court DENIES  
5 Defendants' Motion and VACATES the upcoming hearing date on that motion.

6 **IT IS SO ORDERED.**

7  
8 Dated: June 7, 2011



CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE